

### **REMARKS**

Applicants have amended claims 3, 5, and 19. Claims 1-3, 5-6, and 9-26 are currently pending. The amendments to the claims do not constitute the addition of new matter. Support for the changes to the claims may be found in the specification, drawings and claims as originally filed. The changes made to the claims by the current amendment are attached hereto in a document entitled "Version With Markings to Show Changes Made." Entry of the amendment is respectfully requested.

### **Rejection under 35 U.S.C. § 112**

Applicants have amended claim 5 to provide an antecedent basis for "the compression molded material." Based upon amended claim 5, Applicants respectfully request that the Examiner withdraw his Section 112 rejection of claim 5.

### **Rejections under 35 U.S.C. § 102(b)**

#### **Rejections Under Hussong '493**

The Examiner rejected claims 1-2 and 19-23 under § 102(b) as being anticipated by United States Patent No. 6,004,493 issued to *Hussong* (*Hussong '493*). Applicants respectfully traverse these rejections.

Claims 1 and 21 of the present application include a burner panel formed from a compression molding technique. *Hussong '493* does not disclose a burner panel comprised of a compression molded material or a compression molding method for forming burner panels.

*Hussong '493* is directed to a vacuum forming technique for the formation of a panel. Vacuum molding is different from compression molding. In vacuum molding, and as disclosed in *Hussong '493*, a slurry of material is used. *Hussong '493*, col. 3, lines 3-8. The slurry is of a consistency so that material contained therein can be transported through a conduit system. *Id.* at col. 3, lines 11-13. A pump creates a vacuum that draws the slurry around a screen. *Id.* at col. 3. The screen is porous to allow a vacuum to draw through it. The screen prohibits almost all of the solid material from passing through, but allows fluids to pass. *Id.* at col. 3, lines 44-53. Although *Hussong '493* discloses a cover that incidentally presses down on the screen, this is not

compression molding. The cover is used to provide the necessary vacuum for this vacuum molding technique.

Compression molding includes the use of compressive pressure as the basis for forming an object in a desired shape. There is no vacuum, slurry, or screen as described in *Hussong '493* used in a compression molding system. Applicants have claimed a "compression molded" material and method, not a vacuum molded material and method, which is what is disclosed in *Hussong '493*.

Further, claim 19 of the present application includes a gas burner formed from a burner panel and a bottom burner member. As shown in the drawings and disclosed in the specification, the bottom burner member is not in and of itself a burner. *Hussong '493* discloses a tube burner 66 set below and separate from the artificial logs and the burner cover. This is different from the present invention, which discloses a burner that includes a burner member and the burner panel.

Also, *Hussong '493* discloses that the tube burner 66 fits within the interior cavity of the hollow log. In the invention of claim 19, the hollow cavity is formed by components of the burner itself, the burner panel and the bottom burner member.

Additionally, in claim 19, "the burner panel defines at least one aperture to provide a gas/air mixture to the top surface of the burner panel." As shown in Figure 6 of *Hussong '493*, the gas/air mixture is provided out the apertures in the tube burner 66, and then the mixture is ignited to form flames 64 that exit through the opening 62 in the artificial log or through openings 80 of the burner cover 78.

Thus, *Hussong '493* does not contain every element of the claimed invention and therefore cannot anticipate claims 1, 19, and 21 under § 102. Because claims 2, 20, and 22-23 depend on independent allowable claims 1, 19, and 21, respectively, these dependent claims are also allowable. Applicants respectfully request the withdrawal of the rejections to claims 1-2 and 19-23.

#### Rejections Under The '464 Patent

The Examiner rejected claims 3, 6, and 9 under §102(b) as being anticipated by U.S. Patent No. 4,875,464 issued to *Shimek* (the '*464 patent*'). Applicants respectfully traverse this rejection.

Claim 3 requires that the burner panel be a monolithic and molded to form at least one preformed log wherein the at least one preformed log defines at least a portion of the cavity formed by the burner. The burner includes the burner panel and a bottom burner member. The bottom burner member is coupled to the burner panel to form the burner.

The continuous log (24C) of the '*464 patent* is not part of the burner. The '*464 patent* discloses a multiple level burner including two burner tubes (11F, 11B). The burner tubes (11F, 11B) include an array of burner holes (13) and the gas is ignited from these burner holes (13). The flame produced from the ignition of the gas then travels through log openings (24A) of the continuous log (24C). *See, e.g.,* Figure 7 of the '*464 patent*.

The '*464 patent* does not anticipate claim 3. Claim 3 includes an entirely different burner structure. In the '*464 patent*, the two burner tubes form the burner. This burner then is placed within a cavity formed by a preformed log (24C). The preformed log (24C) is not connected to nor does it form any portion of the burner as recited in claim 3.

Unlike the burner of the '*464 patent*, the burner of claim 3 is formed from the burner panel and a bottom member that is coupled to the burner panel. Further, the burner of the present invention includes a cavity defined by the bottom member and the burner panel. The '*464 patent* does not disclose this structure.

Based on the foregoing, the '*464 patent* does not anticipate claim 3 of the present invention because it does not contain every element of that reference. Claims 6 and 9 are dependent upon independent and allowable claim 3. Therefore, claims 6 and 9 are also allowable. Applicants respectfully request the withdrawal of the rejections to claims 3, 6, and 9.

### **Rejections under 35 U.S.C. § 103(a)**

#### **The '464 Patent and Hussong '493**

The Examiner rejected claim 5 under 35 U.S.C. §103(a) as being unpatentable over the '*464 patent* in view of *Hussong '493*. Also, the Examiner rejected claim 24 as unpatentable over *Hussong '493* in view of the '*464 patent*. Applicants respectfully traverse these rejections.

As discussed above, *Hussong '493* does not disclose, teach, or suggest a compression-molded burner panel. *Hussong '493* is entirely directed to vacuum forming techniques. Further,

the '464 *patent* does not disclose the compression molding for forming the composite log disclosed therein. Therefore, it would not have been obvious from these references to make the burner panel from a compression-molded material. Thus, claims 5 and 24, are not obvious in light of the '464 *patent* and *Hussong '493*. Further, claims 5 and 24 are allowable because they depend from independent and allowable claims 3 and 21, respectively.

Applicants request that the Examiner withdraw his rejection of claims 5 and 24.

#### The '237 Patent and *Hussong '493*

The Examiner rejected claims 10-18 and 26 under 35 U.S.C. §103(a) as being unpatentable over the '237 *patent* in view of *Hussong '493*. The Examiner also rejected claim 25 as being unpatentable over *Hussong '493* in view of the '237 *patent*. Applicants respectfully traverse these rejections.

Again, as discussed above, *Hussong '493* does not disclose, teach, or suggest a compression-molded burner panel. *Hussong '493* is entirely directed to vacuum forming techniques. Further, the '237 *patent* discloses a vacuum technique using a slurry and a forming mold. Applicants' independent claims 10 and 26 include a compression molded material. Thus, claim 10 and 26 are not obvious in light of the '237 *patent* and *Hussong '493* and withdrawal of the Examiner's rejections is respectfully requested. Claims 11-18 and 25, which depend from independent and allowable claims 10 and 21, respectively, are also allowable.

#### Conclusion

In light of the foregoing amendments and remarks, Applicants submit that the pending claims 1-3, 5-6 and 9-26 are in condition for allowance and withdrawal of the Examiner's rejections is requested. Notification of such allowance is respectfully requested. Applicants also note that there may be additional reasons that the pending claims are patentably distinct from the cited references and reserve the right to raise any related arguments in the future.

The Examiner is encouraged to contact Applicants' undersigned attorney, at the below listed telephone number, to discuss this matter if any questions arise upon further examination of the pending claims.

Respectfully submitted,

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	LYONS ET AL.	Examiner:	YEUNG, JAMES
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Title:	MONOLITHIC PANEL FOR A GAS BURNER		

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VERSION WITH MARKINGS TO SHOW CHANGES MADEIn the Claims

Claims 3, 5, and 19 have been amended as follows:

3. (Once Amended) A gas burner for a fireplace, comprising:
- a burner panel defining a top surface and a bottom surface, wherein the burner panel is molded to form at least one preformed log;
  - a bottom burner member coupled to the burner panel;
  - wherein the burner panel defines at least one aperture to provide a gas/air mixture to the top surface of the burner panel;
  - wherein the bottom surface of the burner panel and the bottom member together define[s] at least one cavity;
  - wherein the at least one [performed] preformed log defines at least a portion of the at least one cavity; and
  - wherein the at least one cavity extends above at least a portion of the top surface of the burner panel.

5. (Once Amended) The gas burner of claim 3, wherein the burner panel comprises a compression molded material, the compression molded material [comprises] comprising an inorganic fiber and a binder.

19. (Once Amended) A gas burner for a fireplace, comprising:

a burner panel defining a top surface and a bottom surface, wherein the top surface has a raised upper portion and a lower portion;

a bottom burner member coupled to the burner panel;

wherein the burner panel defines at least one aperture to provide a gas/air mixture to the top surface of the burner panel;

wherein the bottom surface of the burner panel and the bottom burner member define[s] at least one cavity;

wherein the at least one cavity extends above the lower portion of the top surface of the burner panel; and

wherein the raised upper portion of the top surface extends above the lower portion.